CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. ~~586~~ 227.

CHARLES H. TREAT, U. S. COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

STEPHEN V. WHITE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED MARCH 19, 1900.

(17680.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 566.

CHARLES H. TREAT, U. S. COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

STEPHEN N. WHITE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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1 United States circuit court of appeals for the second circuit.

CHARLES H. TREAT, UNITED STATES COLLECTOR of internal revenue, plaintiff in error,
vs.
STEPHEN V. WHITE, DEFENDANT IN ERROR.

Certificate for instructions.

To the Supreme Court of the United States:

This action was commenced in the New York supreme court, city and county of New York, by the service of a summons and complaint. Subsequently the United States attorney for the southern district of New York, representing the collector of internal revenue, removed the action to the U. S. circuit court for the southern district of New York pursuant to the provisions of sec. 643, R. S. of the United States.

This cause came before this court on a writ of error to the United States circuit court for the southern district of New York to review a judgment of that court by which the defendant in error recovered judgment against the plaintiff in error for the sum of six hundred and twenty-six dollars and seventy-five cents.

Upon said writ of error a question of law was presented as to which this court desires the instruction of the Supreme Court for its proper decision.

The pleadings are annexed.

The facts are as follows:

From the 1st day of July, 1898, until the date of the commencement of this action the defendant in error, Stephen V. White, was doing business as a stock broker on the New York Stock Exchange. In the course of his business White sold "calls" upon 30,200 shares of stock, the
2 said "calls" being of the same tenor and effect as Exhibit A, hereinafter set forth, and only varying in the names of the stock, the date, and the price at which they were offered.

EXHIBIT A.

NEW YORK, *May 18th, 1899.*

For value received the bearer may call on me on one day's notice, except last day, when notice is not required. One hundred shares of the common stock of the American Sugar Refining Company, at one hundred and seventy-five per cent any time in fifteen days from date. All dividends, for which transfer books close during said time, go with the stock. Expires June 2, 1899, 3 p. m.

(Signed) S. V. WHITE.

These 30,200 shares of stock, for which "calls" at various times had been in existence, were, as matter of fact, never actually "called" and no stamp was put upon the same. That the plaintiff in error, Charles H. Treat, United States collector of internal revenue, demanded of the defendant in error, Stephen V. White, the sum of six hundred and four dollars, which sum was the value of 30,200 internal-revenue stamps of the denomination of two cents each.

This sum of six hundred and four dollars was paid by the defendant in error, Stephen V. White, under protest. Subsequently the defendant in error demanded the return of the said six hundred and four dollars, but the demand was refused.

Upon the facts set forth the question of law, concerning which this court desires the instruction of the Supreme Court for its proper decision, is:

Is the above memorandum in writing, designated as Exhibit A, an "Agreement to sell" under the provisions of section 25, Schedule A, act of Congress approved June 13th, 1898, and, as such, taxable?

WM. J. WALLACE,
Circuit Judge.
N. SHIPMAN,
Circuit Judge.

3 (Indorsed:) Suit No. . U. S. circuit court of appeals for the second circuit. Charles H. Treat, U. S. collector of internal revenue, plaintiff in error, vs. Stephen V. White, defendant in error. Certificate for instructions. Henry L. Burnett, United States attorney, attorney for collector. United States circuit court of appeals, second circuit. Filed Mar. 16, 1900. William Parkin, clerk.

4 In the supreme court of the State of New York.

STEPHEN V. WHITE, PLAINTIFF,
vs.
CHARLES H. TREAT, U. S. COLLECTOR of internal revenue, defendant.

Trial desired in New York County.

To the supreme court of the State of New York:

The plaintiff above named claims of the defendant the sum of six hundred and four dollars, with interest from July 12th, 1899, and for cause of said claim plaintiff states:

1st. That from July 1st, 1898, to said July 12th, 1899, he was a member of the New York Stock Exchange, doing business at 7 Wall street, New York City, and that in the course of his business he sold certain options or offers to sell stocks, aggregating in all 30,200 shares of the par value of $3,020,000, which said offers were in all instances made at prices above the market price and were all limited to short periods from their respective dates, and none of them was ever accepted by the respective holders thereof, nor was a sale of any of said stock ever made. For reference, a copy is given of one of said options or offers to sell, the said copy being hereto attached as Exhibit A, all the other papers thus sold being of like tenor and effect, except only as to difference in date, time, price, and the stock offered.

5 2nd. The Commissioner of Internal Revenue, under the laws of the United States, took cognizance of said transactions, and wrongfully and illegally held that such offers to sell were agreements to sell within the meaning of section 25, Schedule A, public laws 133,

laws of 1898, approved June 13th, 1898, and should have had adhesive revenue stamps at the rate of 2 cents each 100 dollars of par value, or in all $604.00, and under his direction this plaintiff was duly assessed for said sum.

3rd. That the defendant is U. S. collector of internal revenue for the second district of New York, and acting under the directions of said Commissioner of Internal Revenue the defendant demanded payment of said sum under threat of collecting the same by law.

4th. This plaintiff protested against the said assessment as wrongful and illegal, but being compelled to yield to the sovereign demand of the U. S. Government he paid said sum under protest to said defendant, as such collector, and immediately appealed to the U. S. Commissioner of Internal Revenue at Washington to have the said tax refunded, as was his right and duty under the U. S. law in such case made and provided, which appeal and demand was denied.

5th. Plaintiff avers that no tax was imposed upon said offers to sell under the laws of the United States, and that said sum was wrongfully obtained from plaintiff by said false construction of law, and is due and owing plaintiff, with interest.

6 Wherefore, plaintiff demands judgment against defendant for said six hundred and four dollars, with interest, and costs of this suit.

S. V. WHITE,
Plaintiff in person, 7 Wall St.

STATE OF NEW YORK, *County of New York, ss:*

Stephen V. White, being duly sworn, says that he is plaintiff in this action; that he is acquainted with the contents of the foregoing complaint, and that the same is true to his knowledge, except as to those matters therein stated to be alleged upon information and belief; and that as to those matters he believes it to be true.

S. V. WHITE.

Sworn to before me this 18th day of September, 1899.

JAMES WALSH,
Notary Public, Kings County, Cert. filed N. Y. Co.

7 EXHIBIT A.

NEW YORK, *May 18th, 1899.*

For value received the bearer may call on me on one day's notice, except last day, when notice is not required, one hundred shares of the common stock of the American Sugar Refining Company at one hundred and seventy-five per cent, any time in fifteen days from date.

All dividends for which transfer books close during said time go with the stock.

Expires June 2nd, 1899, 3 p. m.

(Signed) S. V. WHITE.

8 United States circuit court, southern district of New York.

STEPHEN V. WHITE, PLAINTIFF,
vs.
CHARLES H. TREAT, UNITED STATES COLLECTOR of internal revenue, defendant.

The defendant above named, by his attorney, Henry L. Burnett, U. S. attorney for the southern district of New York, for answer to the complaint of the plaintiff herein alleges on information and belief:

First. Answering the first paragraph of the plaintiff's complaint, defendant alleges that he has no knowledge or information sufficient to form a belief, and therefore denies the same.

Second. Defendant denies that the Commissioner of Internal Revenue under the laws of the United States took cognizance of certain transactions set forth in the first paragraph of the complaint and wrongfully and illegally held that certain offers to sell were agreements to sell, but on the contrary defendant alleges that such offers to sell were in truth and in fact agreements to sell within the meaning of section 25, Schedule "A," of the act of Congress approved June 13th, 1898.

Third. Defendant admits that he is United States collector of
9 internal revenue for the second district of New York, and at all the times herein mentioned was acting under the direction of the United States Commissioner of Internal Revenue.

Fourth. Defendant denies that no tax was imposed upon the said offers to sell under the laws of the United States; and defendant further denies that the said sum of $604, mentioned in the second paragraph of the complaint, was wrongfully obtained from plaintiff by a false construction of law; and defendant further denies that the said sum, or any other sum, is due and owing to plaintiff with interest.

Wherefore defendant demands judgment that the complaint be dismissed, together with the costs and disbursements of this action.

(S'g'd) HENRY L. BURNETT,
United States Attorney and Attorney for Defendant.

Office and post-office address, room 50, post-office building, New York City.

10 STATE OF NEW YORK,
City and County of New York, ss:

Charles H. Treat, being duly sworn, deposes and says that he is the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(S'g'd) CHAS. H. TREAT.

Sworn to before me this 2nd day of November, 1899.

[SEAL.] FREDERICK L. CAMPBELL,
Notary Public, Kings County.
Certificate filed in N. Y. Co.

11 United States of America, second circuit.

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled Charles H. Treat, U. S. collector of internal revenue, plaintiff in error, vs. Stephen V. White, defendant in error, was duly filed and entered of record in my office by order of said court on the 16th day of March, nineteen hundred, and as directed by said court the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of New York, in the State of New York, this 16th day of March, in the year of our Lord nineteen hundred, and of the independence of the United States the one hundred and twenty-fourth.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[10 cent internal revenue stamp.]

12 (Indorsed:) United States circuit court of appeals, second circuit. Chas. H. Treat v. Stephen V. White. Certificate for instructions.

(Indorsement on cover:) Certificate. File No. 17680. U. S. C. C. of appeals, 2nd circuit. Term No., 566. Charles H. Treat, U. S. collector of internal revenue, plaintiff in error, vs. Stephen V. White. Filed March 19, 1900. Office Supreme Court of U. S. Received Mar. 17, 1900.

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